

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMAR ANTONIO BEAVER,

Petitioner,

v.

BRUNO STOLC,

Respondent.

Case No. C08-430-JCC

ORDER

This matter comes before the Court on Petitioner's Objections (Dkt. No. 54) to the Report and Recommendation of Magistrate Judge Theiler. (Dkt. No. 53.) Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby ADOPTS the R&R for the reasons explained herein.

I. BACKGROUND

The factual circumstances of this case have been well documented. (*see* R&R ¶¶ 1–5 (Dkt. No. 53 at 1–4).) Petitioner is currently in custody pursuant to his convictions for attempted robbery in the first degree, assault in the first degree, assault in the second degree, and unlawful possession of a firearm in the first degree. (*Id.*) Petitioner's attempted robbery and assault charges all received deadly-weapon enhancements. (*Id.*) Petitioner filed a petition for writ of habeas corpus, which the Honorable Judge Theiler recommended be denied in her

1 Report and Recommendation. (*Id.* ¶ 1.) Petitioner now asks this court to reject Judge Theiler's
2 R&R with respect to the weapon enhancement aspects of his convictions. (Obj. (Dkt. No. 54).)
3 For reasons stated below, Petitioner's request is DENIED.

4 **II. APPLICABLE LAW**

5 To succeed in his habeas petition, Petitioner must establish that the state court's
6 decision was contrary to, or involved an unreasonable application of, clearly established
7 federal law, or that the decision was based on an unreasonable determination of the facts in
8 light of the evidence presented. 28 U.S.C. § 2254(d). In his Objection, Petitioner challenged
9 only the double jeopardy analysis of the R&R with respect to the deadly weapon sentence
10 enhancements. (Obj. ¶ 2 (Dkt. No. 54 at 1).) The Double Jeopardy Clause of the Fifth
11 Amendment guards against multiple punishments for the same offense. *Brown v. Ohio*, 432
12 U.S. 161, 165 (1977). The test for determining whether separate punishments may be imposed
13 for multiple offenses that arise out of a single transaction is found in *Blockburger v. United*
14 *States*, 284 U.S. 299 (1932). The *Blockburger* analysis turns upon whether each potential
15 statutory violation requires a "proof of fact that the other does not;" if so, then multiple
16 offenses may be charged. 284 U.S. at 304. Thus Petitioner must establish that the deadly
17 weapon enhancement of his sentence was contrary to, or an unreasonable application of,
18 clearly established federal law concerning double jeopardy.

19 **III. DISCUSSION**

20 **A. Petitioner's Arguments**

21 Though Petitioner's arguments remain, as Judge Theiler noted, "somewhat confusing,"
22 it appears that he is yet again asserting the same arguments that were rejected both on direct
23 appeal to the state courts and by Judge Theiler. (R&R ¶ 23 (Dkt. No. 53 at 11).) Petitioner
24 claims that the three deadly weapon enhancements he received for his attempted robbery and
25 assault charges violate both due process and double jeopardy because only two weapons were
26 involved in the crimes. (Obj. ¶ 5 (Dkt. No. 54 at 2).) In support of his argument, Petitioner

1 cites numerous cases, including: *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *United States v.*
2 *Gaddis*, 424 U.S. 544 (1976), *United States v. Arbelaez*, 812 F.2d 530, 533 (9th Cir. 1987),
3 *United States v. Wilson*, 781 F.2d 1438 (9th Cir. 1986), and *United States v. Valentine*, 706
4 F.2d 282 (10th Cir. 1983). None of these cases are relevant to Petitioner's circumstances.

5 **B. Firearm Enhancements and Habeas Petitions**

6 Petitioner has failed to cite authorities that would suggest that the firearm-enhanced
7 portions of his sentence contravene federal law concerning double jeopardy. On direct appeal,
8 the Court of Appeals already rejected Petitioner's challenges to the firearm enhancements.
9 (R&R ¶ 26 (Dkt. No. 53 at 11–12).) They did so on the grounds that the Washington
10 legislature has clearly indicated that (1) firearms enhancements are to be imposed even when
11 possession or use of a firearm is an element of the underlying offense, and (2) multiple
12 enhancements are to be imposed for a single act of using or possessing when possible. (*See*
13 Dkt. No. 35, Ex. 3 at 12–13.) Petitioner has not given any reason to suspect that these
14 enhancement policies are contrary to, or involve unreasonable applications of, clearly
15 established federal law.

16 Petitioner's claims of a double jeopardy violation might carry some weight if, say, he
17 had been convicted on two separate accounts of unlawful possession of a firearm in the first
18 degree. Where, however, Petitioner is charged with four distinct offenses, the use of a single
19 firearm to enhance three of these sentences does not suddenly render them in violation of
20 double jeopardy. Under the *Blockburger* standard for double jeopardy, these offenses retain
21 their distinguishing proofs of fact, irrespective of any firearm enhancement. 284 U.S. at 304.

22 The cases Petitioner relies upon do not explain how firearm enhancement might
23 constitute a violation of the *Blockburger* standard. The *Apprendi* Court was dealing with
24 sentences that exceed statutory maximums. 530 U.S. 466. The *Gaddis* Court analyzed the
25 overlapping offenses of bank robbery and possession of robbery proceeds, and explained how
26 they were not meant to be triggered by the same transaction. 424 U.S. at 547. The *Arbelaez*

1 court determined that a single act of giving cocaine to another could not give rise to both the
2 offense of aiding and abetting distribution of cocaine and the offense of aiding and abetting
3 possession of cocaine. 812 F.2d at 533. The court in *Valentine* required that simultaneous
4 receipt or possession of more than one firearm could only constitute one offense per relevant
5 statute. 706 F.2d at 294. And finally, the court in *Wilson* held that a defendant could only be
6 convicted and sentenced for one of the many possible sequential offenses involved in the
7 manufacture of PCP. 781 F.2d at 1440.

8 If Petitioner wishes to argue that the Washington legislature's firearm enhancement
9 policy somehow contravenes federal law, he must do more than cite irrelevant precedent. As it
10 stands, Petitioner has done nothing to suggest that multiple firearm enhancements stemming
11 from a single firearm can violate the Fifth Amendment's prohibition against double jeopardy.
12 Consequently, Petitioner has failed to demonstrate that the state court's decision was contrary
13 to, or involved an unreasonable application of, clearly established federal law.

14 **IV. CONCLUSION**

15 For the foregoing reasons, the R&R (Dkt. No. 53) is ADOPTED. Petitioner's federal
16 habeas petition (Dkt. No. 7) is DENIED and this action is DISMISSED with prejudice. The
17 Clerk shall direct copies of this Order to all counsel of record and to Judge Theiler.

18 DATED this 9th day of June, 2010.

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22 John C. Coughenour
23 UNITED STATES DISTRICT JUDGE
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